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SUNRISE GREEN SDN BHD v. PENTADBIR TANAH, WILAYAH PERSEKUTUAN KUALA LUMPUR

COURT OF APPEAL, PUTRAJAYA
HANIPAH FARIKULLAH JCA
VAZEER ALAM MYDIN MEERA JCA
B HADHARIAH SYED ISMAIL JCA
[CIVIL APPEAL NO: W-01(W)-653-11-2021]
28 SEPTEMBER 2022

C **Abstract** – *The concept of 'one for all and all for one', that the loss of the original access road having impacted not only the acquired portion of a piece of land, but also the adjoining lots as a one piece of development land, has no application to land acquisition. In such cases, compensation would only be awarded to the affected land and not to the adjoining lands, although the adjoining lands formed a piece of development land.*

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LAND LAW: *Acquisition of land – Compensation – Acquisition of part of land – Acquired portion amalgamated with adjoining lands for single development prior to acquisition – Acquisition removed frontage access for development – Whether entire proposed development landlocked due to acquisition – Whether loss of original access road impacted only acquired land – Whether award for injurious affection should include adjoining lands*

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The appellant was the registered owner of six plots of lands, namely, Lot Nos. 476, 487, 488, 489, 490 and PT490. The Federal Government compulsorily acquired 59.595 ('acquired portion') of the total 466 square metres of Lot 487 ('subject land') for Projek Lebuhraya Setiawangsa - Pantai Expressway (SPE) DUKE Fasa 3 (Lot-Lot Tambahan). Prior to the acquisition, the acquired portion and the subject land was amalgamated and planned for development together with the appellant's adjoining lots as a single development. The size of the adjoining lots was 3,168.83 square metres. The acquisition had removed the frontage access for the development. The Land Administrator ('LA'), pursuant to the provisions of the Land Acquisition Act 1960 ('LAA'), awarded: (i) compensation of RM536,355 in respect of the market value of the acquired land of 59.595 square metres based on the value of RM9,000 per square metre; and (ii) injurious affection of RM548,647 on the balance of the unacquired portion of 406.405 square metres at 15% on a value of RM9000 per square metre. Aggrieved with the award, the appellant applied to refer the matter to the court for its determination. The Judicial Commissioner ('JC'):

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(i) awarded the appellant a compensation of RM655,545 as the market value of the acquired land, an increase of RM119,190 from the award of the LA; and (ii) rejected the appellant's claim for compensation of RM44,341,700 for injurious affection. Instead, the JC decided that a fair and reasonable amount of compensation for injurious affection was RM670,568 which was 15% of RM11,000 on the unacquired portion of the subject land *ie*, 406.405 square metres only (excluding the adjoining lots). Hence, the appellant's appeal against part of the decision of the High Court in disallowing the claim for RM44,341,700 as compensation for injurious affection for the appellant's adjoining lots. The issue for the court's determination was whether the court should also include the appellant's adjoining lots in making the award for injurious affection.

Held (dismissing appeal with costs)
Per Hadhariah Syed Ismail JCA delivering the judgment of the court:

(1) The appellant was entitled to claim compensation for injurious affection for the entire proposed development land if it could prove that the proposed development land was landlocked and inaccessible as a result of the acquisition. As a result of the acquisition, the concessionaire of the project had proposed that the access road be shifted to Lot 490, a road reserve. With the proposed shift of the access road to Lot 490, there was an alternative access to the development site and the entire piece of land was not landlocked. Only a small portion, 59.595 square metres or 12.8% of Lot 487, was acquired, whereas the remainder land of Lot 487 was still in economical size for the development and the adjoining lots were intact. (paras 24-26 & 28)

(2) The concept of 'one for all and all for one', in that, the loss of the original access road had impacted not only the acquired Lot 487 but also the adjoining lots as a one piece of development land has no application to land acquisition. Compensation is given to the portion of the land acquired and damage caused to the land so acquired. In this case, the acquired land was only Lot 487. The original access road was located in Lot 487 and the acquisition extinguished the access road. Therefore, damage was caused to Lot 487 and compensation for injurious affection for the loss of the original access road was to be confined to Lot 487 only. There was no damage and no injurious affection to the adjoining lots. The only connection between Lot 487 and the adjoining lots was that they shared a single access road in Lot 487. The problem of losing the original access road was solved with the road access being shifted to Lot 490. In the circumstances, it was unfair for the appellant to claim compensation for injurious affection for the entire six lots as one big piece of land when only one lot was affected. (para 29)

Legislation referred to:
Land Acquisition Act 1960, First Schedule s. 2(d)

For the appellant - Ong Kheng Leong, Muhammad Zaidi Izman Murugan & Hee Hooi Chun; M/s Ghazi & Lim
For the respondent - Iskandar Zulkarnaen Che Mohd Nor & Natassa Zaini; FCs

[Editor's note: For the High Court judgment, please see Sunrise Green Sdn Bhd v. Pentadbir Tanah Dan Galian Wilayah Persekutuan Kuala Lumpur [2021] 1 LNS 1959 (affirmed).]

Reported by S Barathi

JUDGMENT

Hadhariah Syed Ismail JCA:

Introduction

[1] The appeal by the appellant, who is the applicant in a land reference case is against part of the decision of the High Court dated 14 October 2021, in disallowing the appellant's claim for RM44,341,700 as compensation for injurious affection for the appellant's adjoining lots.

[2] We heard the appeal on 8 August 2022 and unanimously dismissed it.

[3] This is our reasons.

Background Facts

[4] The appellant is the registered owner of six plots of lands namely Lot Nos. 476, 487, 488, 489, 490 and PT490, all the lands are situated in the District of Kuala Lumpur, Wilayah Persekutuan.

[5] On 4 February 2019, the Federal Government compulsorily acquired a portion of Lot 487 (the subject land) for Projek Lebuhraya Setiawangsa - Pantai Expressway (SPE) DUKE Fasa 3 (Lot-Lot Tambahan).

[6] The total land area of the subject land is 466 square metres. The portion of the subject land that was compulsorily acquired is 59.595 square metres. The unacquired portion of the subject land is 406.405 square metres (remainder land).

[7] Prior to the acquisition, the acquired portion and the subject land was amalgamated and planned for development together with the appellant's adjoining lots, namely lots 476, 488, 489, 490 and PT490 as a single development. The size of the adjoining lots is 3,168.83 square metres.

[8] The subject land together with the adjoining lots were approved by Dewan Bandaraya Kuala Lumpur (DBKL) *via* Development Order dated 20 November 2014 for a single commercial development of one block, 19 storey office building comprised of one floor basement car parks and a

six storey podium car park with parking bays for 218 cars (including four disabled parking bays), 72 motorcycle parking bays, and 13-storey office space to be erected on all the six plots with a single frontage access from the subject land (the development).

[9] It is a fact that the Development Order was still valid and existing until 10 February 2021.

[10] It is an undisputed fact that the acquisition of a portion of the subject land has effectively removed the frontage access for the development.

[11] Arising from the acquisition, the appellant claims for compensation for the market value of the acquired portion of the subject land and for injurious affection for the loss of the original access road.

The Land Administrator's Award

[12] At the Land Administrator's enquiry pursuant to the provisions of the Land Acquisition Act 1960 (the Act), the Land Administrator awarded the followings:

(i) compensation of RM536,355 in respect of the market value of the acquired land of 59.595 square metres based on the value of RM9,000 per square metre; and

(ii) injurious affection of RM548,647 on the balance of the unacquired portion of 406.405 square metres at 15% on a value of RM9000 per square metre.

[13] Aggrieved with the award of the Land Administrator, the appellant filed an application with the Land Administrator under Form N of the Act, requesting that the Land Administrator refer the matter to the court for its determination.

The High Court Award

[14] At the High Court, based on the private valuation report from Henry Butcher Malaysia Sdn Bhd, the appellant claims for the followings:

(i) market value of the acquired land area of 59.595 square meter @ RM13,993 per square meter = RM833,300; and

(ii) injurious affection of 100% on the affected land area *ie*, remainder area of the subject land together with the adjoining lots with total land area of 3,168.83 square metres @ RM13,993 per square metre = RM44,341,700.

[15] With regard to the first claim, the Government's assessor recommended a market value of RM10,000 per square metre while the private assessor recommended RM11,000 per square meter. The learned Judicial Commissioner (L JC) preferred the recommendation of the private

assessor and decided that market value of RM11,000 per square metre is fair and reasonable. Accordingly, the L JC awarded a compensation of RM655,545 (*ie*, 59.595 square metres x RM11,000 per square metre) as the market value of the acquired land. Therefore, there is an increase of RM119,190 (RM655,545 - RM536,355) from the award of the Land Administrator. The appellant did not appeal against the award of RM655,545.

[16] With regard to the second claim, the L JC rejected the appellant's claim for compensation of RM44,341,700 for injurious affection. Instead, the L JC decided that a fair and reasonable amount of compensation for injurious affection is RM670,568 which is 15% of RM11,000 on the unacquired portion of the subject land *ie*, 406.405 square metres only (excluding the adjoining lots). The L JC supported his decision with the following reasons:

(i) Both assessors have recommended that an award of compensation for injurious affection is warranted due to the loss of the original frontage affecting access to the subject land.

(ii) Both assessors advised that the amount of compensation should be calculated based on 15% of the market value of the land (not 100% as claimed by the appellant) and the claim is based on the area of remainder land (not the adjoining lots).

(iii) The appellant's proposed development site (the subject land and the adjoining lots) has an alternative access *via* Lot 490. Lembaga Lebuhraya Malaysia also proposed that the access road be shifted to Lot 490. This proposal has already been approved by Dewan Bandaraya Kuala Lumpur.

(iv) With the alternative access, the appellant's proposed development is not landlocked.

The Issue

[17] Whether the court should also include the appellant's adjoining lots in making the award for injurious affection.

Our Decision

[18] Before us, the appellant submits that the award for injurious affection was manifestly inadequate and erroneous in law because it did not take into account the adjoining lots which together with the subject land formed a single piece of development land with a sole frontage access in the Development Order which had been approved by Dewan Bandaraya Kuala Lumpur.

[19] The appellant also submits that the L JC has failed to recognise that the development was on the basis of "one for all and all for one".

[20] At the time this appeal was heard, the appellant was no longer claiming for compensation of RM44,341,700 for injurious affection for the adjoining lots. Instead, the appellant claimed for a lesser amount of RM5,228,569.50 calculated as follows:

> 3,168.83 square meters x RM11,000 per square metre x 15% = RM5,228,569.50.

[21] In urging this court to increase the award, the appellant submits the court must take into consideration the following points:

(i) The appellant has paid a premium of RM648,597 to DBKL for the conversion of the adjoining lots and the subject land into commercial land in 2015.

(ii) The appellant is in a worse financial position given the acquisition and the original Development Order as approved may no longer be feasible.

(iii) The compulsory acquisition had injuriously affected the whole development and the adjoining lots and not only the acquired subject land.

(iv) The acquisition caused diminution of the land value and the development as planned is incapable to be carried out.

(v) With the loss of the original single frontage, the proposed development is now without a proper access, landlocked and is totally inaccessible.

(vi) The debatable unofficial access *via* Lot PT 490 is highly disputable as per Traffic Impact Assessment (TIA) conducted by professional traffic consultant, namely Atur Trafik Sdn Bhd.

[22] It is further submitted that due to the existence of the Development Order comprising the six lots, the court should treat the adjoining lots and the subject land as one piece of land when invoking s. 2(d) of the First Schedule of the Land Acquisition Act 1960. Section 2(d) reads as follows:

> 2. In determining the amount of compensation to be awarded for any scheduled land acquired under this Act there shall be taken into consideration the following matters and no others:
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> (a) ..
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> (b) ..
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> (c) ...
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> (d) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether moveable or immoveable, in any manner.

[23] In short, the appellant is asking this court to award compensation for injurious affection for the entire proposed development land (3,168.83 square metre adjoining lots plus 406.405 square meter unacquired subject land) for an acquisition of only 59.595 square metres.

[24] In our view, the appellant is entitled to claim compensation for injurious affection for the entire proposed development land if it can prove the proposed development land is landlocked and inaccessible as a result of the acquisition. This, we find the appellant had failed to do.

[25] It is an undisputed fact that the original access road for Lot 487 was along Jalan Kampung Pandan and right at a sharp corner next to Lot 20060. It was a left in and left out junction with dual single lane.

[26] As a result of the acquisition, the Concessionaire of SPE *ie*, Lebuhraya Duke Fasa 3 Sdn Bhd has proposed that the access road be shifted to Lot 490 with Right-In-Right Out (RIRO) at the Kampung Pandan Roundabout. Lot 490 is a road reserve. Para 3.0 of the Concessionaire's brief report (encl. 6 p. 260) states:

> In conjunction with the above, EDP proposed to shift the new left in left out junction near to Lot 490. This location connected to Jalan Kampung Pandan at the straight alignment which better sight distance compared to the previous junction at the bend curve. For acceleration, a dedicated lane has been provided to ease the traffic from the said lot. The proposed new access road is therefore safer as compared to the previous existing access.
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> The concept of proposed shifting of the mentioned junction has been approved by DBKL on 7.1.2020.

[27] On the other hand, the appellant has engaged Atur Trafik Sdn Bhd to conduct a traffic impact assessment (TIA) study on the traffic junction J1 at the Kampung Pandan Roundabout with Right-In-Right Out (RIRO) access to the proposed development site. The TIA report (encl. 6 p. 216) states:

> Our traffic analysis and micro-simulating modelling works have found that the proposed development site will become effectively a piece of land locked property due to the high traffic volume circulating at the Kampung Pandan Roundabout and the RIRO being located too close to J1.

[28] Based on the Concessionaire's report, we agree with the finding of the L JC that with the proposed shift of the access road to Lot 490, there is an alternative access to the development site and that the entire piece of land is not landlocked as claimed by the appellant. We disagree with the appellant that the proposed development is no longer feasible because only a small portion (59.595 square metres or 12.8% of Lot 487) was acquired. The remainder land of Lot 487 is still in economical size for the development. While the adjoining lots are intact.

[29] In our view, the appellant's concept of "one for all and all for one" in that the loss of the original access road had impacted not only the acquired Lot 487 but also the adjoining lots as a one piece of development land has no application to land acquisition. This is because compensation is given to the portion of the land acquired and damage caused to the land so acquired. In this case, the acquired land is Lot 487 only. The original access road is located in Lot 487. The acquisition extinguished the access road in Lot 487. Therefore, damage is caused to Lot 487. Common sense dictates that compensation for injurious affection for the loss of the original access road is to be confined to Lot 487 only. The appellant cannot lump together the adjoining lots with Lot 487 as one piece of land when in reality the adjoining lots remain intact physically. There is no damage and no injurious affection to the adjoining lots. The only connection between Lot 487 and the adjoining lots is they shared a single access road in Lot 487. The problem of losing the original access road is solved with the road access being shifted to Lot 490. In the circumstances, in our view it is unfair for the appellant to claim for compensation for injurious affection for the entire six lots as one big piece of land when only one lot is affected.

[30] The appellant maintains its position that based on TIA report by Atur Trafik Sdn Bhd, the proposed shifting of junction from Lot 487 to Lot 490 will cause a landlock situation to the development site due to heavy traffic at Kampung Pandan Roundabout. The issue of traffic congestion was considered by the L JC and this is what His Lordship says at paras. 83 and 84 of the judgment:

> 83. But forecasts and projections, by its very nature, are not certain and definite. It might even border on being speculative. As observed by the Federal Court in *Ng Tiou Hong v. Collector of Land Revenue Gombak* [1984] 2 M L J 35, too much weight should not be given to the estimates, forecasts and projections of experts or consultants, unless it is supported by other evidence.
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> 84. It seems to me that traffic congestion in the vicinity of the proposed development is a perennial problem. Moreover, the traffic situation may be in a state of flux and could change, depending on future infrastructure works and other developments. As such, I find that the proposed development site is not land-locked and totally inaccessible as alleged due to the purported high traffic volume.

[31] It is our considered view that the analysis and the conclusion reached by the L JC is a correct finding of facts. At best, TIA is a speculation. But what is certain is there is an alternative access road in Lot 490 which has been approved by DBKL. The proposed new access road clearly shows the development site is not landlocked. On this ground alone, the appellant's appeal must fail.

[32] In conclusion, we find all the points raised by the appellant in this appeal have been considered by the L JC. We see no good reason to disturb the finding of fact made by the L JC. It is our considered view that this is not an appropriate case for appellate intervention. Accordingly, we dismiss the appeal with costs of RM10,000 to the respondent.